LPA No. 20 of 2004

04.07.2007 Present: Mr.Anup Rattan. Counsel for the appellant.

Mr. K.D.Shreedhar, counsel for respondent No.2.

The short prayer made in this LPA directed against the order of the learned Single Judge dated 31.10.2003, is that the learned Single Judge has erred in holding that the application for restoration of the writ petition was barred by limitation.

Brief facts of the case are that a writ petition was filed by the petitioner which was registered as CWP No.94 of 99. This writ petition was dismissed in default of appearance of the writ petitioner and his counsel on 8.8.2003. The application for restoration of the writ petition was filed on 7.10.2003. The grounds given in the application were that the brief of the case was mixed up during renovation of the office of the counsel for the writ petitioner and that it was only on 2.9.2003 that it was discovered that the writ petition stands dismissed in default.

The learned Single Judge has come to the conclusion that there is no explanation given by the petitioner for the period from 2.9.2003 to 7.10.2003 and has held that the application was therefore time barred and dismissed the same solely on this ground.

Section 141 of the Code of Civil Procedure reads as follows:

> " ***Miscellaneous proceedings***. - The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

> ***Explanation***.- In this Section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution."

Thus, it is clear that the provisions of Code of Civil Procedure do not apply to the proceedings under Article 226 of the Constitution of India. Therefore, the learned Single Judge fell into an error in holding that the application for restoration was time barred. Limitation is only prescribed for filing an application under Order 9 CPC and not for an application filed for restoration of a Civil Writ Petition.

Keeping in view the entire facts and circumstances of the case, we set aside the order passed by the learned Single Judge and allow the application for restoration filed by the petitioner. The Writ petition is ordered to be restored to its original number and shall be listed for hearing before the learned Single Judge in due course. The LPA stands disposed of accordingly.

(Deepak Gupta),ACJ.

4th July, 2007 (V.K.Ahuja),J.
(sds)